

FILED

AUG - 2 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	No. CR 07-00488 CW (DMR)
)	
Plaintiff,)	
v.)	REPORT AND RECOMMENDATION
)	REGARDING DEFENDANT'S
KELVIN REYNALDO ARNOLD,)	ADMISSION OF VIOLATIONS OF THE
)	TERMS AND CONDITIONS OF HIS
Defendant.)	SUPERVISED RELEASE OR
)	PROBATION

The magistrate judge recommends to the district court that it accept the defendant's admissions to certain violations of the terms and conditions of his supervision as charged in the Second Amended Petition filed on June 21, 2010. Specifically, at the hearing on August 2, 2010, the defendant admitted charges two and three of the petition charging that: (1) in violation of the special condition that he participate in a program of testing and treatment for drug abuse, defendant failed to report for drug testing on May 17, 2010, May 26, 2010, and June 7, 2010; and (2) in violation of the standard condition that he follow the instructions of his probation officer, defendant failed to report to the probation office on May 5, 2010 and June 2, 2010 after having been directed by his probation officer to report to the probation office on the first Wednesday of each month. The magistrate judge makes the following findings:

REPORT AND RECOMMENDATION
CR 07-00488 CW (DMR)
cc: Copy to parties of record, Nikki, Probation

1 1. On the hearing date set forth above, with the assistance of counsel, the defendant waived
2 his right to admit the violations in district court and instead consented to admit the violations in a
3 hearing in magistrate court. Specifically, the magistrate judge advised him that he had a right to
4 admit the violations in district court and that under 28 U.S.C. § 636(b) and Federal Rule of Criminal
5 Procedure 59, he could waive that right and consent to admit the violations in a hearing in magistrate
6 court. The magistrate judge also advised him that it would issue a written report recommending that
7 the district judge accept the admissions, that the district judge would review the recommendation and
8 decide whether to accept the admissions, and that the district judge and not the magistrate judge
9 would sentence him. The magistrate judge also advised him of the procedures (also set forth at the
10 end of this order) for challenging the magistrate judge's recommendation. The defendant then
11 waived his right to proceed in district court and consented to the magistrate judge's conducting the
12 hearing regarding the admission of the supervised release violations.

13 2. The magistrate judge then reviewed, and the defendant acknowledged that he understood,
14 the following: (a) the nature of the charge and the maximum penalty he faced; (b) his rights under
15 Federal Rule of Criminal Procedure 32.1(b)(2); (c) the district judge, not the magistrate judge, would
16 conduct the sentencing; and (d) the parties' sentencing agreement was not binding on the district
17 judge.

18 3. After the advisements set forth in Rule 32.1(b)(2) and summarized here, the defendant
19 waived his right to a Rule 32.1(b)(2) hearing and admitted the charges summarized above. The
20 magistrate judge found that he was fully competent and capable of admitting the charges in the
21 petition, that he was aware of the nature of the charges and the consequences of admitting them, and
22 that his admission and waiver of rights were knowing and voluntary. This court thus recommends to
23 the district judge that it accept the defendant's admissions.

24 4. Any party may serve and file specific written objections within fourteen days after being
25 served with a copy of this order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59. Failure to file
26 objections within the specified time may waive a party's right to review. *See* Fed. R. Crim. P. 59(b).

27 5. At the parties' request, this court set the matter for further proceedings before the district
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1 judge on Wednesday, September 8, 2010, at 2:00 p.m.

2 IT IS SO RECOMMENDED.

3 Dated: August 2, 2010



DONNA M. RYU
United States Magistrate Judge

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